In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2025-0066
	:	
Appellant,	:	On Appeal from the
	:	Hamilton County
v.	:	Court of Appeals,
	:	First Appellate District
AMY RODRIGUEZ,	:	
	:	Court of Appeals
Appellee.	:	Case No. C-2400075

BRIEF OF AMICUS CURIAE OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLANT

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INTRODUCTION

Only plain error can revive an objection that counsel decided to forgo at trial, and for good reason. Our system relies on parties to present their legal arguments at the appropriate time—usually when the decision they think is error can still be corrected. To enforce that rule, courts apply a high standard for reviewing claims of error that arise for the first time on appeal. Rodriguez cannot meet that standard. To begin, she cannot show error, much less an obvious deviation from any established legal rule. She also cannot show prejudice, as all signs point to a fair and thoughtful verdict. And even if she could show these elements, reversing the verdict would itself be a miscarriage of justice, rather than preventing one.

The First District took a wrong turn. Its primary and clearest misstep was disregarding this Court's precedent when determining what qualifies as a deviation from a legal rule. This Court says that it can only occur when a clear legal rule exists, but the First District said otherwise. Beyond that, the First District freely found prejudice and a miscarriage of justice without holding Rodriguez to her burden to meet those high thresholds. This Court should reverse the First District and reinstate the verdict.

STATEMENT OF AMICUS INTEREST

The Attorney General is the State's chief law officer. R.C. 109.02. He has an interest in preserving valid convictions, promoting clear and accurate guidelines for conducting trials, and maintaining the proper legal standard for plain error review on appeal.

STATEMENT OF THE CASE AND FACTS

I. Amy Rodriguez abuses her stepson C.D.

Amy Rodriguez entered C.D.'s life when C.D.'s father and mother divorced. Tr.686–87 (Vol.4). (Rodriguez later adopted a different last name, but this brief calls her Rodriguez in keeping with the caption.) C.D.'s mother began taking opioids for dental pain and was slipping into an addiction that would eventually claim her life. *Id.* Meanwhile, C.D.'s father and Rodriguez became C.D.'s primary—and eventually exclusive—caretakers. Tr.688–89 (Vol.4).

Life in Rodriguez's house was a mixed experience. Pictures documented that the family had gone on a few vacations and camping trips over the years. Tr.1077–79 (Vol.6). But several observers noted that she treated C.D. differently than her biological children, especially when it came to severity of punishments. Tr.1399 (Vol.7). Over time, her punishments for C.D. escalated, and to use Rodriguez's words, became increasingly "harsh." Tr.1709 (Vol.9). C.D. recounted sitting in time out for days, from his waking moments to bedtime—sometimes even commanded to stand in intentionally painful positions. Tr.750–53, 793–94 (Vol.4). Rodriguez also withheld food as punishment and forced him to wear only diapers or underwear while isolated. Tr.1782–83 (Vol.9), 783 (Vol.4). C.D. eventually tried to run away, unsuccessfully, and later was admitted to a hospital for physical and mental care. Tr.791–92; 821 (Vol.4). The medical staff found that he was underweight—in the bottom 0.29 percentile for his age. Tr.1847 (Vol.10).

II. The State indicts and tries Rodriguez.

The State charged Rodriguez with eleven counts of endangering children, each corresponding to a different act of abuse or neglect. Before trial, Rodriguez moved for a bill of particulars, which the State provided. It detailed the conduct that corresponded to each of the eleven counts in the indictment in a list:

- "C.D. was forced to sit on a bench for multiple hours and days at a time. At times he was tethered to the bench with locked restraints making it impossible for him to leave."
- "C.D. was forced to stand in a corner facing the wall for up to 14 hours per day for multiple days in a row."
- "C.D.'s punishments were moved to his bedroom where he was forced to stand in an imaginary box for the entire day while classical music blared from an alarm clock in the room. At the time he was only allowed to wear his little brother's shorts. This took place continuously for multiple weeks."
- "C.D. was also forced to lean against a wall for extended periods of time holding himself up with only his fingertips causing serious discomfort and pain."
- "Between 1/1/21 and 1/2/21 C.D. was strapped to his bed with locked restraints on his wrists and ankles throughout the night."
- "Eventually C.D. was confined to his room without physical human contact over a course of many days. An alarm was on the door and he was monitored by 3 cameras for the purpose of preventing C.D.'s escape."
- "C.D. was not provided appropriate warm clothing or bedding. Often he was permitted only to wear a pair of his young brother's shorts and was provided only 1 baby size blanket."
- "C.D. was beaten by [Rodriguez] with a belt on many occasions. On one occasion he was hit so severely [Rodriguez] caused his legs to bleed."

- "C.D. was also beaten by [Rodriguez] using a spoon on many occasions. On one occasion he was struck more than 70 times."
- "Food was restricted from C.D. as a form of punishment. He was denied access to food by it being locked away in the kitchen. He suffered unhealthy weight loss as a result."
- "C.D. was restricted from using the restroom for extensive periods of time. C.D. was forced to wear a diaper. He could not ask to use the restroom. If C.D. had an accident and urinated on himself [Rodriguez] forced C.D. to take a cold shower."

State v. Rodriguez, 2025-Ohio-53, ¶6 (1st Dist.) ("App.Op.").

Rodriguez moved for a more specific bill of particulars, but the State did not respond, the court did not rule on it, and Rodriguez never moved to dismiss the indictment or otherwise determine that request. App.Op.¶8 (The State also charged C.D.'s grandparents with complicity, but the jury found them not guilty. Tr.3168–69 (Vol.18.))

At trial, the State introduced over a dozen witnesses who testified about the specific facts for each count. Tr.3223–33 (Vol.21). The State's evidence included a "trauma timeline" that the victim had written about the different punishments he suffered at Rodriguez's hands. Tr.869–70 (Vol.5). It was submitted into evidence and received into the jury deliberation room as an exhibit. Tr.3233 (Vol.21). The Defense countered with witnesses of its own. Tr.3234 (Vol.21). At the close of evidence, Rodriguez moved for an acquittal under Rule 29. Tr.2741 (Vol.14). The court denied it. Tr. 2754–55. The State also moved to amend Counts 1 and 4 to remove a specification about serious bodily injury. Tr.2922–23 (Vol.15). Rodriguez's counsel opposed on the grounds that it would

change the nature of the counts, but the court granted the State's motion. Tr.2928, 2935 (Vol.15).

At closing argument, the prosecutor "linked each count in the indictment to a specific act of torture or abuse committed by Rodriguez, and it utilized the trauma timeline that C.D. had prepared while doing so." App.Op.¶14. The prosecutor's explanation of the charges also matched the same order as the bill of particulars. App.Op.¶¶6, 14.

During deliberations, the jury sent two questions to the judge. The first question was, "For Amy's 11 Counts, which punishment corresponds to each count?" Tr.3160 (Vol.17). The court suggested answering by instructing the jury to "refer to the jury instructions and the testimony and the evidence that's been presented." Tr.3159 (Vol.17). Rodriguez's counsel stated, "I have no objection on behalf of Amy Rodriguez to that response, Your Honor." *Id.* The prosecutor offered to send them a chart explaining which count corresponded with each act, but she also acknowledged that Rodriguez's counsel was "going to object" to that course of action. *Id.*

The next day of deliberation, the jury sent a second question: "Which count aligns with each separate and distinct matter? We are referencing Page 6 under 'multiple counts' in the jury instructions." Tr.3165 (Vol.18). Without objection, the court gave the same response, telling the jury to "use [their] collective memories to apply to the testimony and evidence that was presented to the instructions." *Id.*

The jury ultimately acquitted Rodriguez of seven counts (Counts 1, 3, 5, 7, 8, 9, and 11) and convicted her of four counts (Counts 2, 4, 6, and 10). App.Op.¶20. Rodriguez moved for an acquittal on Counts 2, 4, 6, and 10 for insufficient evidence. Def.Mot.Aquit.1. The court denied the motion. At the sentencing hearing, Rodriguez's counsel explained, going count by count, what conduct the jury found that Rodriguez committed. Tr.3196 (Vol.20). The trial court sentenced her to an indefinite sentence of three to four-and-a-half years. App.Op.¶20.

III. The court of appeals overturns Rodriguez's conviction and bars retrial.

Rodriguez appealed, raising just two assignments of error which centered on the same claim. App.Op.¶¶22, 75. The first argued that the jury instructions and verdict forms failed to specify which count corresponded with which act of abuse. *Id.* And the second argued that her counsel was ineffective for failing to object to the instructions and forms. *Id.*

The court of appeals agreed with Rodriguez and reversed. It recognized that its review was for plain error because no one objected to the jury instructions or verdict form at trial. App.Op.¶27. After surveying some related precedent, the First District held that the indictment, bill of particulars, and jury instructions failed to adequately connect each count to the associated conduct. App.Op.¶¶31–52. It also held that the error was obvious because the jury asked a question about the counts, no binding case law on the subject was necessary for this error to qualify as obvious, and the trial court had a chance to cure

the problem by answering the jury's questions differently. App.Op.¶¶53–60. Next, it held that the error prejudiced Rodriguez's substantial rights because the jury was confused, though it noted it would have held otherwise if the jury had convicted across the board. App.Op.¶¶61–69. And it held that the error created a miscarriage of justice because Rodriguez is unable to challenge the sufficiency of the evidence because she does not know the charges the jury found her guilty of. App.Op.¶70. Finally, the court held that Rodriguez could not be retried because there was no way to know which counts resulted in acquittal, and she thus could not be retried under the Double Jeopardy Clauses in the federal and state constitutions. App.Op.¶¶71–74. The court declined to address the ineffective-assistance claim. App.Op.¶75.

Judge Winkler dissented. He wrote that due process only requires a differentiation of the charges "*at some point in the proceeding*." App.Op.¶79 (Winkler, J., dissenting) (quotation omitted). Because the prosecutor explained the counts to the jury, that differentiation occurred during trial. *Id.* He noted that this Court has never required that the jury instructions include the specific acts to differentiate them, especially when no party objected. App.Op.¶81 (Winkler, J., dissenting). And he pointed out that, unlike one of the cases on which the majority relied, there is no active double-jeopardy concern because there is no independent reason to reverse. App.Op.¶82 (Winkler., J., dissenting). And finally, he noted that Rodriguez did not suffer any real prejudice to her appeal because

she could rely on the prosecutor's explanation for her appeal and because her theory of defense was that C.D. was lying about all the punishments. App.Op.¶83.

ARGUMENT

Appellant's Propositions of Law:

> ***Proposition of Law I****: When an individual is charged with multiple counts of the same crime, to sustain a conviction for each count the State need only present evidence of discernible facts to substantiate the separate counts.*
>
> ***Proposition of Law II****: A reviewing court may not find plain error in the absence of binding authority that clearly demonstrates an obvious defect in the proceedings below.*

This case calls on the Court to resolve a limited jury-instruction question in a limited plain-error context. The Court can resolve both propositions of law by explaining that Rodriguez's claims of error and prejudice do not come close to meeting the plain-error standard. The indictment and jury instructions below create no constitutional problem under either the federal or state constitutions, meaning there is no error, much less an obvious one. Rodriguez also cannot show the prejudice necessary to prevail under plain-error review. And the only risk of manifest injustice here is rewarding gamesmanship—counsel making strategic decisions that failed at trial and reviving unraised objections as reasons to invalidate the verdict. The jury's verdict should stand.

I. The Ohio and federal constitutions outline rules for indictments, bills of particulars, and jury instructions.

Although this case concerns only a claim about jury instructions and verdict forms, it will be helpful to review the relevant law linking three important trial-related documents: the indictment, the bill of particulars, and the jury instructions.

Indictments. Both the Ohio and federal constitutions protect the right to a grand jury in many cases. Ohio protects the right to "presentment or indictment of a grand jury" in any "capital, or otherwise infamous, crime." Ohio Const., art. I, §10. The U.S. Constitution guarantees the same right. U.S. Const. amend. V. The indictment is the vehicle for presenting charges to the jury. Relatedly, both constitutions also protect defendants from double jeopardy and require the government to provide notice of the charges against defendants. Ohio Const., art. I, §10; U.S. Const. amends. V, VI. The federal provisions about double jeopardy and notice also apply in the States, *Cole v. State of Ark.*, 333 U.S. 196, 201 (1948); *Benton v. Maryland*, 395 U.S. 784, 787 (1969), even though the grand-jury guarantee does not, *Hurtado v. People of State of Cal.*, 110 U.S. 516, 538 (1884).

Under Ohio law, an indictment meets constitutional requirements if it "first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *State v. Pepka*, 2010-Ohio-1045, ¶20. By statute, an indictment must include certain procedural and jurisdictional statements. R.C. 2941.03. It must also include a statement of the offense, but it can use the language of the revised code and "ordinary and concise language" to do so. R.C. 2941.05. "The statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the

elements of the offense with which the defendant is charged." Crim.R. 7(B). A similar standard applies in federal courts. *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007).

Listing the elements of the offense and a fair notice of the offense does not mean providing a detailed account of the crime. For example, a specific date and place along with the elements of the crime charged makes for a sufficient indictment. *Id.* at 107–08; *see generally* 1 Charles A. Wright & Arthur R. Miller, Fed. Prac. & Proc. Crim. §124, *Nature and Contents of the Indictment or Information*, (5th ed., updated May 20, 2025) ("Wright & Miller"). In the cases where those facts do not provide enough information to mount a defense, the bill of particulars comes into the picture.

Bills of Particulars. Like indictments, bills of particulars have federal and state counterparts. In both systems, their "purpose is to give the defendant notice of the essential facts supporting the crimes and thus avoid prejudicial surprise at trial" as well as "support a defendant's claim of double jeopardy in the event of a later prosecution for the same offense," which are closely related functions. Wright & Miller §130, *Bill of Particulars*; *see also State v. Sellards*, 17 Ohio St. 3d 169, 171 (1985); *United States v. Miller-West*, 2021 U.S. Dist. LEXIS 44940, at **3–4 (S.D. Ohio 2021).

Whether a bill of particulars is needed is separate from the question of whether the indictment is adequate. "It is fundamental that a bill of particulars cannot cure a defective indictment." *State v. Hous*, 200-Ohio-666, ¶11 (2d Dist.) (citing *State v. Grinnell*, 112 Ohio App. 3d 124 (1996)). A bill of particulars is appropriate, however, when a sufficient

indictment still fails to provide enough detail about the accusation for the accused to be able to mount a defense. *State v. Troisi*, 2022-Ohio-3582, ¶26; *State v. Haynes*, 2022-Ohio-4473, ¶18; *see also* Wright & Miller §130. In Ohio, "providing a bill of particulars upon request (under either the rule or the statute) is mandatory." *Haynes*, 2022-Ohio-4473, at ¶20 (quotation omitted); *see* Crim.R. 7(E); R.C. 2941.07.

Jury Instructions. Finally, there are the jury instructions and verdict forms. The purpose of jury instructions is to "assist juries in determining the interplay between the facts of the case before it and the applicable law." *State v. Griffin*, 2014-Ohio-4767, ¶5. While Ohio offers model jury instructions, the parties have the opportunity (and responsibility) to ask the court for the instructions they think proper. Crim.R. 30(A); *State v. Stallings*, 89 Ohio St. 3d 280, 292 (2000); *State v. Bey*, 85 Ohio St. 3d 487, 497 (1999). What to request in the jury instructions and whether to object to an instruction are strategic decisions that must anticipate how the jury will react to the evidence. *See, e.g.*, *State v. Mohamed*, 2017-Ohio-7468, ¶¶17, 22; *State v. Clayton*, 62 Ohio St. 2d 45, 46, 48 (1980).

Jury instructions must "present a correct, pertinent statement of the law that is appropriate to the facts." *State v. White*, 2015-Ohio-492, ¶46. And within the trial court's "broad discretion to decide how to fashion jury instructions," the instructions should be appropriately "tailored" to the case. *Id.* at ¶¶46–47. When judging jury instructions in their full context, "[c]losing arguments, though not evidence, are a helpful starting place because they highlight how the government conceptualized the evidence and the

indictment, and how the evidence was presented to the jury." *United States v. Maike*, No. 22-6114, 2025 WL 1766401, at *14 (6th Cir. June 26, 2025) (Nalbandian, J., concurring) (quotation omitted).

II. No reversible error infected the indictment, bill of particulars, or jury instructions.

The standard of review shapes this appeal, so it calls for attention before the merits. To begin, the primary method of curing errors in indictments, bills of particulars, or jury instructions is for the affected party to object at or before trial. The reasons for this rule are obvious. It promotes "judicial economy by providing incentives (and not disincentives) for the defendant to raise all errors in the trial court—where, in many cases, such errors can be easily corrected." *State v. Perry*, 2004-Ohio-297, ¶23. It also prevents sandbagging—parties intentionally and silently stockpiling unobjected errors as a back-up plan in case trial does not go as planned. *Id.*

Failing to object has serious consequences for review. Once a party forfeits an objection, appellate review is limited to "[p]lain errors or defects affecting substantial rights." Crim.R. 52(B); *see also* Crim.R. 30(A). Under plain-error review, the defendant bears the burden of demonstrating that "an error occurred, that the error was plain, and that the error affected his substantial rights." *State v. Bond*, 2022-Ohio-4150, ¶17. Even if a defendant surmounts each requirement, "a court is not obliged to correct" a plain error. *Barnes*, 94 Ohio St. 3d at 27. Relief is only appropriate "under exceptional circumstances . . . to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St. 2d 91, 97 (1978).

Finding a miscarriage of justice too freely "would undermine and impair the administration of justice and detract from the advantages derived from orderly rules of procedure." *Id.* at 96 (quotation omitted).

Each element is a high standard. *First*, to prove an error, the defendant must demonstrate "a deviation from the legal rule." *State v. Barnes*, 94 Ohio St. 3d 21, 27 (2002). If this Court has not made a "definitive pronouncement" on the matter, or if there is "disagreement among the lower courts," the defendant cannot show the necessary error. *Id.* at 28. *Second*, an error is "plain" when the trial proceeding has an "obvious" defect. *Id.* at 27. *Third*, for an error to affect a defendant's "substantial rights," the "trial court's error must have affected the outcome of the trial." *Id.* That is, "[r]eversal is warranted only if the outcome of the trial clearly would have been different absent the error." *State v. Hill*, 92 Ohio St. 3d 191, 203 (2001). To prevail, the defendant must show all three elements—a difficult combined threshold to meet.

All parties here agree that no one raised a relevant objection below. As to the indictment, Rodriguez needed to object before trial and within thirty-five days after arraignment. Crim.R. 12(C)(2), (D); *State v. Foust*, 2004-Ohio-7006, ¶27. And Rodriguez should have objected to any of the jury instructions and answers sent to the jury *before* the court delivered those instructions or answers to the jury. Crim.R. 30(A); *State v. Mann*, 2003-Ohio-5705, ¶33 (11th Dist.). Instead, Rodriguez's counsel specifically noted that they had

no objection to the answer the judge sent to the jury after their first question. That means that plain-error review applies.

Rodriguez cannot carry her burden on any of the three required elements, nor—based on the child abuse the jury found beyond reasonable doubt—can she show that her guilty verdicts work an injustice. This Court should reverse the First District and reinstate the verdict.

Obvious Error. Taking error and obviousness together, the trial court did not err—much less obviously err—because it did not deviate from a legal rule. The indictment contained the elements of the offenses and satisfied all constitutional, statutory, and rule-based requirements. Rodriguez has never seriously argued otherwise. She has not pointed to any specific error in the indictment other than failing to "identif[y] the conduct that constituted the basis for each charge." Am.Br.Def-Apt.13. As explained above, that is not an error. And Rodriguez cannot cite binding authority to the contrary because there is none.

To the extent that Rodriguez's complaint about the indictment blends into a notice-based argument, that claim of error fails too. Rodriguez argues that "[e]ven if the information contained in the Bill of Particulars put Amy on notice of the acts of which she was accused" (which it did), "a Bill of Particulars is not evidence." Am.Br.Def.-Apt.15. But whether a document is evidence has nothing to do with whether, before trial, Rodriguez had notice sufficient to mount a defense. Since the bill of particulars provided the

specifics of the crime above and beyond the indictment—which is its purpose—it gave Rodriguez the notice necessary to defend herself. *See* App.Op.¶6.

Turn from the indictment to the jury instructions. There is no error to discover in the instructions, either. Rodriguez had argued that the jury "quickly discovered something six lawyers and the trial court had missed — information connecting Amy's alleged conduct with each Count was missing." Am.Br.Def.-Apt.15. But she merely assumes the error. In contrast, the appeals court recognized that "there is no authority from either the Ohio Supreme Court or this district regarding what information must be contained in the jury instructions and verdict forms" in a case like this. App.Op.¶33. The lack of controlling law—meaning there cannot be a "deviation from a legal rule"—means there is no error, especially not an obvious one. *Barnes*, 94 Ohio St. 3d at 27.

The First District erred in deciding these elements. The court recognized that this Court has required that there be a "bright-line, binding rule that would establish the obviousness of the defect in the proceedings" before there can be a plain error. App.Op.¶55. But it declined to follow this Court's precedent because "some courts have elected to find plain error in the absence of binding case law," including a Kentucky appeals court and the federal Eighth Circuit. App.Op.¶¶57–58. It also opted to treat the jury question like an objection, noting that it "brought to the court's attention" the issue "when the court could have fixed the error." App.Op.¶59. Failing to follow this Court's precedent and

treating a jury question as if it were an objection were major mistakes that led the First District to the wrong conclusion.

Prejudice. Rodriguez also cannot show prejudice. To show prejudice, she must show that the trial "clearly would have been different" without the purported error. Here, that would mean that the jury would have acquitted on more counts if the indictment, bill of particulars, verdict form, or answer to the jury had more explicitly tied each count to a certain act.

There is no reason to think that is true. The jury had the trauma timeline outlining the different acts of abuse—the one the prosecutor had used to explain the counts during closing argument. Tr.3233 (Vol.21). And in the end, the jury demonstrated its ability to sift through the counts and deal with them separately—it acquitted and convicted on several different, nonconsecutive counts. If the jury had really been confused, one would expect to see an all-or-nothing verdict reflecting the confusion of the counts. At any rate, if implying confusion or not are both equally plausible readings of the verdict, that means Rodriguez cannot carry her burden to show prejudice.

Rodriguez's claims of prejudice miss the mark. She raised a double-jeopardy problem below, but the indictment and bill of particulars protect her from double-jeopardy in a future case. After all, *every* count in the indictment, whether it resulted in conviction or acquittal, is now barred from a future separate prosecution. *United States v. Wilson*, 420 U.S. 332, 339–40 (1975). So her right against double-jeopardy in future cases is secure.

Rodriguez also claims prejudice because it is "impossible for Amy to argue whether any or all of the convictions were against the manifest weight of the evidence and/or based on insufficient evidence" because of the lack of differentiation in the verdict forms. Am.Br.Def.-Apt.19–20. This claim fails for two reasons. First, "prejudice" here means trial prejudice—that "the outcome of the trial clearly would have been different absent the error." *Hill*, 92 Ohio St. 3d at 203. So her claim of prejudice to her appeal fails to address the requirement for plain error. Second, even if this type of prejudice were relevant, Rodriguez has demonstrated her own claim to be false. She moved for acquittal after the verdict without any apparent struggle to interpret the verdicts. Def.Mot.Acquit.1. And she discussed the convictions during sentencing without expressing any misgivings about which acts corresponded with which count. Tr.3196 (Vol.20). To say now that such arguments are "impossible" blinks reality.

The First District erred in its analysis on this point as well. It found prejudice because the jury questions "clearly documented" that the jury was confused. App.Op.¶66. And it noted that it "likely would reach a different outcome had the jury … found Rodriguez guilty of all charged offenses." App.Op.¶69. But that analysis is exactly backward. If the jury had found Rodriguez guilty of every count, that would indicate a stronger possibility of confusion, not a weaker one. By differentiating the counts in its verdict, the jury justified the presumption that it followed the court's instructions, used the exhibits to recall the different acts, and rendered verdicts accordingly. *Cf. Weeks v. Angelone*, 528

U.S. 225, 234 (2000). And at any rate, documenting jury confusion at some point during deliberations is not the same as Rodriguez carrying her burden to show that "the outcome of the trial clearly would have been different" had the jury been instructed otherwise. *Hill*, 92 Ohio St. 3d at 203.

Miscarriage of Justice. Finally, Rodriguez cannot show a miscarriage of justice. The State presented weeks' worth of evidence of Rodriguez's guilt, including cruel infliction of pain and deprivation on her own stepson. And in the end, the jury determined that Rodriguez committed four criminal acts. Even if the jury had confused two counts and their related conduct, they still would have delivered effectively the same verdict they intended to: four convictions of the felony level specified in the verdict forms. Thus, even assuming that Rodriguez could meet all three requirements for plain-error review, she cannot show a manifest miscarriage of justice.

The First District found manifest injustice because Rodriguez was purportedly "unable to challenge the sufficiency or the weight of the evidence supporting [her] convictions on appeal." App.Op.¶70. Even if that were true (as noted above, it is not), it falls well short of a miscarriage of justice. As noted, the trial involved extensive evidence of the abuse family and friends observed in the home. Even though Rodriguez disagrees with how the jury weighed the evidence in its four convictions, that would not support a sufficiency claim in any event.

On the contrary, the reversal here created a miscarriage of justice. It rewarded the kind of gamesmanship that this Court has sought to discourage. Whether to request specific captions or instructions is a strategy call, and each defendant has to predict for themselves what path will yield the highest likelihood of success. *E.g. State v. Triplett*, 2018-Ohio-5405, ¶38 (7th Dist.); *State v. C.W.*, 2018-Ohio-1479, ¶¶62–65 (10th Dist.). Here, Rodriguez may well have calculated that captions or a helpful chart would have made a guilty verdict more likely. That is a valid strategy decision, but it is not valid to turn around and argue that her own choices led to an unfair trial. The same goes for not objecting to the court's proposed answer to the jury. *E.g. State v. Clemons*, 2011-Ohio-1177, ¶44 (7th Dist.). Indeed, in a similar case, defense objected to an answer that delineated the counts, arguing that the court "usurped the jury's function" and should have "require[ed] them to use their collective memories." *State v. Amos*, 2008-Ohio-7138, ¶45 (7th Dist.). Rodriguez chose not to seek a clearer delineation of the counts. Indeed, counsel said nothing to dispel the idea that she would object if the State tried to send an explanatory chart to help the jury. Tr.3159 (Vol.17). She has every right to make that strategy call, but she cannot use the results to cry foul on appeal.

Amplifying the injustice of the First District's reversal, it prevented a retrial even though the jury convicted Rodriguez of four felonies. App.Op.¶71. Overturning the jury's verdict without any hope of restoring justice on re-trial is the kind of miscarriage of justice that courts should avoid.

CONCLUSION

For these reasons, the Court should reverse the First District's decision.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Amicus Curiae Ohio Attorney General Dave Yost in Support of Appellant was served on July 7, 2025, by e-mail on the following:

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